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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/088,163	06/01/1998	JOHN R. MOSER, JR	960514.ORI	1414

7590 06/03/2003

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MINNEAPOLIS, MN 554023325

EXAMINER
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MILLER, EDWARD A

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/088,163

Applicant(s)

MOSER, JR, JOHN R.

Examiner

Edward A. Miller

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 70-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 70-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on February 27, 2003 has been entered.

3. Claims 70-85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite. In claim 70, lines 3-6, as an example of those claims with polymer language, the metes and bounds of the claims is not clear. In line 3 thereof, "polyol" is found, but there is no polyol line 4. Line 4 recites "tetramethylene adipate", but this does not indicate any polyol, as a term such as glycol (before adipate) is missing. This is inconsistent and fails to define the metes and bounds of the invention. This may also be viewed as a lack of antecedent basis, chemically. This language must be corrected throughout. While the instant claims are improved, more remains to be done. These remain exemplary.

4. Claims 70-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradford et al. in view of Chi et al., Willer and Fleming, for reasons analogous to those set forth in paragraph 2 of Paper No. 6, incorporated herein by reference.

5. Claims 70-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sutton et al. in view of Hauser et al., Godfrey, Genetti et al., and Kangas.

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Sutton et al. teach the basics of polyester polymer binders, e.g., at col. 4, lines 52-75. It would have been obvious to use a similar polyol, as well known in this art, as in the polyester art, col. 4, line 63. Hauser et al. clearly suggests the use of tetramethylene glycol, at col. 2, line 16, and substitution of such would have been obvious to one of ordinary skill in the art. Godfrey is primarily cumulative, but with a specific teaching of curing catalysts when carboxy terminated polyesters are used. Genetti et al., col. 5, line 67 through col. 6, line 15, e.g., and Kangas, at col. 4, lines 56-60 and col. 5, lines 1-2, 6, and 13, further show that the polyester itself is well known in the polymer art, e.g. Variation of specific, notoriously well known parameters would have been obvious to one of ordinary skill in the art. It is well settled that optimizing a result effective variable is well within the expected ability of a person or ordinary skill in the subject art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980), *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955).

6. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. The Group fax number is (703) 305-7687.

If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em  
June 2, 2003



**EDWARD A. MILLER**  
PRIMARY EXAMINER